

Report of the Social Security
Disability Review Commission
to the 1984 General
Assembly of North Carolina

June 1984

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TABLE OF CONTENTS

| | <u>Page</u> |
|---------------------------|-------------|
| Letter of Transmittal | 1 |
| Commission Membership | 2 |
| Legislative Authorization | 3-4 |
| Preface | 5 |
| Commission Proceedings | 6 |
| Introductory Statement | 7 |
| Recommendations | 13 |

TO THE MEMBERS OF THE 1984 GENERAL ASSEMBLY.

The report of the Social Security Disability Review Commission made pursuant to Chapter 880 of the 1983 Session Laws is attached.

Respectfully submitted,



Russell Walker



John Varner

Co-Chairmen

Commission Membership

Senator Russell Walker

Representative John W. Varner

Senator Ollie Harris

Representative C. R. Edwards

Dr. Sarah T. Morrow

Mr. Claude A. Myer

Mr. Leo F. Glosemeyer

Mr. William Montgomery

Mr. Donald N. Saunders

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1983
RATIFIED BILL

CHAPTER 880
SENATE BILL 570

AN ACT TO AUTHORIZE A REVIEW OF THE STATE'S DISABILITY DETERMINATION SERVICES.

Whereas, the State of North Carolina has a direct interest in the manner in which disability determinations are made; and

Whereas, recent changes in federal law and the rules and regulations of the Social Security Administration have led to the termination of thousands of North Carolinians from eligibility under the Title II and Title XVI Social Security disability programs; and

Whereas, due in part to discrepancies between federal court holdings and the directives of the Social Security Administration, the findings of the Disability Determination Services Section are being overruled on appeal in over two thirds of the cases; Now, therefore,
The General Assembly of North Carolina enacts:

Section 1. There is created the Disability Review Commission to review the operations of the North Carolina Disability Determination Services Section of the Division of Social Services.

Sec. 2. The Commission shall consist of 10 members, as follows: The Secretary of the Department of Human Resources shall serve ex officio, and the Director of the Division of Vocational Rehabilitation Services shall serve ex officio. The President of the Senate shall appoint two members of the Senate and the Speaker of the House of Representatives shall appoint two members of the House of Representatives. The Governor shall appoint four members, one of whom shall be a member of the general public receiving Social Security disability benefits, another one shall be a lawyer experienced in the field of application procedures and appeals procedures with respect to disability claims, another one shall be an administrative law judge, active or retired, who has had experience in hearing Social Security disability appeals, and another one shall be a regional officer representing the federal Social Security agency. Any vacancy shall be filled by the appointing authority who appointed the person causing the vacancy. All initial appointments shall be made within one calendar month of the effective date of this act.

Sec. 3. The Commission shall meet initially no later than September 1, 1983, at the call of the Secretary of the Department of Human Resources and shall elect from its membership a chairman and a vice-chairman. The Commission shall meet upon the call of the chairman.

Sec. 4. The Commission members shall receive no salary for serving on the Commission but shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 138-5 and G.S. 138-6.

PREFACE

Chapter 880 of the 1983 Session Laws created the Social Security Disability Review Commission to study problems facing disabled North Carolinians who either apply for, or are terminated from receiving, federal Social Security disability benefits. The Commission's mandate required it to consider problems inherent in the disability programs and to recommend both internal and external procedural changes directed toward total program improvement.

Enclosed in this report are specific recommendations for change to deal with some of the problems encountered by disabled citizens. These are directed either to the federal government or, where within the jurisdiction of the state, to the appropriate state agencies. Also included are specific proposals designed to assist the appropriate agency in reaching the goals stated in the recommendations. Several of the recommendations propose legislation in areas where the General Assembly has jurisdiction to achieve needed reform.

The Commission has worked extremely hard to solicit input from all affected governmental agencies and to hear from as many disabled North Carolinians as possible. We have enjoyed the full cooperation of the North Carolina Disability Determination Services in developing these recommendations. We feel that our efforts have resulted in a report that provides for much needed reform designed to ease some of the human suffering which led to the creation of this Commission by the General Assembly.

INTRODUCTORY STATEMENT

A. Administrative Structure for Determining Disabilities

Social Security disability benefits are provided to those citizens determined to be unable to perform substantial gainful activity due to physical or mental impairments. The disability determinations are made pursuant to guidelines established by Congress and implemented by regulations promulgated by the Social Security Administration. Benefits are provided under either Title II (Social Security Disability) or Title XVI (Supplemental Security Income) of the Social Security Act.

Determinations of disability for both Titles II and XVI are initially made by Disability Determination Services (DDS). DDS also makes determinations for medical assistance using the same guidelines under Title XIX (Medicaid). SSA issues operational directives to DDS through the Program Operation Manual System (POMS) or Social Security Rulings (SSR's). These guidelines are not official regulations subject to the notice and comment provisions of the Administrative Procedures Act. Rather they are internal guidelines issued by SSA to implement the provisions of the Social Security Act.

B. The Continuing Disability Review Process

This Commission was established to provide an overall review of how disabled citizens in North Carolina fare as claimants and recipients of Social Security disability benefits. It has studied many facets of the process, and

At the same time that SSA was moving so rapidly to review the cases of those receiving benefits, it was also issuing POM's and SSR's which were in direct conflict with a number of the Fourth Circuit Court of Appeals' opinions interpreting the Social Security Act. SSA further directed that recipients not meeting these new POM's and SSR's be terminated, even if the condition causing their disability had in no way improved. Studies have shown that the majority of those terminated had experienced no medical improvement, and over one third had experienced a worsening of their condition. This directive by SSA was also found to be contrary to the Social Security Act by a decision of the Fourth Circuit Court of Appeals.

As a result of these drastically changed national policies, terminations increased in North Carolina by 500%. According to statistics provided to the Commission by DDS, 16,381 recipients were terminated from March 1981 until September 1983, compared with 3,350 for the previous 2½ year period. The rate of allowance for initial claims has also dropped dramatically. The tightened federal standards have lowered the allowance rate for initial claims to 29.7%, down from 46.6% in 1980. Of those denied in 1980, 54% were found to qualify for benefits on appeal.

DDS estimated that 60% of those terminated in North Carolina between March 1981 and September 1983 had either the same or a worsened medical condition than that which

recipients from a program to which they had been contributing all of their working lives. In September of 1983, Governor Hunt issued a moratorium upon further terminations which remains in effect. The Governor is awaiting pending Congressional action to deal with the national controversy generated by the policies of the SSA. The State of North Carolina also intervened through DDS on the side of the recipient as party plaintiff in a lawsuit filed in federal District Court. The Court declared that the Secretary of Health and Human Services had applied an illegal standard in disability determinations in North Carolina.

The Commission heard the cases of many individuals in its public hearing who had lost all of their income, their homes, needed medical assistance and, tragically, their lives as a result of the actions of the SSA prior to the declaration of the Governor's moratorium. The Alliance for Social Security Disability Recipients reported that over 40 North Carolinians have died as a direct result of having their benefits cut off. General Accounting Office studies have indicated that very few persons terminated from disability have been able to find work after their checks have been cut off. These findings were underscored by many witnesses testifying at the public hearings. A large percentage, if not a majority, of persons terminated had no way to pay for necessary medical bills,

benefits. We also heard from many working people concerned about the future of a disability program they currently contribute to with every paycheck. Unfortunately, it is with this backdrop of human tragedy that the Commission makes its report to the 1984 General Assembly.

the policies recommended in this report. This Task Force should be composed of representatives from groups with relevant interest and expertise in the disability process.

Specifically, it should include representatives from relevant state government advocacy groups, recipients of disability benefits, experience claimants' representatives, mental health experts, other medical experts, and other groups the General Assembly find appropriate.

Recommendation 4. The Commission recommends that DDS work with a representative independent panel in adopting internal procedures to ensure that Department policies show a sensitivity and responsiveness to the needs of claimants. We have seen a need for policies to ensure:

- a) That all notices be written in language that is understandable to and shows the proper respect for claimants;
- b) That public service announcements be used to inform claimants regarding review procedures, right to continuation of benefits on appeal, and other relevant issues regarding claimants' rights and responsibilities within the disability process;
- c) That special emphasis be given to overcoming language or educational barriers in communicating with claimants and to ensure that every step be taken to communicate effectively with the mentally handicapped, or counselors, representatives, or others working with the mentally handicapped; and

denied. This panel should also develop a specific plan through which DDS examiners could be trained regarding vocational rehabilitation issues as they may relate to terminated recipients and through which vocational counselors could be trained in the disability review process.

Recommendation 7. The Commission recommends that DDS work with the Disability Task Force in developing a policy for face to face reconsiderations which is best designed to provide due process for claimants and ensure that DDS secures all possible available evidence relating to the claimants' ability to perform substantial gainful activity. Such a procedure should lead to more informed decisions at the DDS level, and should result in a much faster administrative response to deserving claims short of the Administrative Law Judge level.

Recommendation 8. The Commission recommends that steps be taken to ensure that claimants who need representation are identified and are assisted with referrals to appropriate representatives. In particular, we recommend:

- a) That the 1984 General Assembly enact legislation providing for the creation of an independent toll-free number to be staffed by two persons qualified to advise claimants regarding their rights within the program. These people should also be responsible for recruiting and designing training for advocates to serve as a referral panel to claimants contacting this toll free number;

Recommendation 10. The Commission recommends that the 1984 General Assembly take steps to provide for the most basic needs of disabled citizens who were terminated since March of 1981. Particular emphasis should be directed toward providing for medical treatment and prescription drugs.

Recommendation 11. The Commission recommends that DDS work with the Disability Task Force in developing a detailed policy regarding the process used to refer a claimant or recipient for a consultative examination. The policy should consider:

- a) Methods designed to ensure that every possible effort is made to solicit medical evidence, including evidence relating to residual functional capacity, from the claimant's treating physicians;
- b) Ways in which to assess claimant satisfaction with consultative examinations and to assess the qualifications and performance of contractual examiners;
- c) Methods of communicating with claimants regarding their right to use their own treating physician for a consultative examination, the availability of travel reimbursements to allow access to proper medical expertise, the results of the consultative exams, and other relevant information to better inform a claimant regarding this process. Claimants should also be given advance notice of at least one week before a consultative examination is scheduled;

based upon evidence provided in the proper form by physicians experienced in treating the claimant's impairments. The policies should consider:

- a) Methods of training medical professionals regarding the disability process, the importance of their input, and the proper format for the provision of medical evidence;
- b) Methods of follow-up for treating physicians who provide less than adequate evidence to allow them to resubmit the information in the required form;
- c) A policy to ensure that DDS decision makers provide great weight to the opinion of treating physicians. These opinions should be followed in the absence of persuasive contradictory evidence, and specific reasons for not following this evidence should be stated in the DDS opinion; and
- d) Methods designed to solicit evidence from non-medical professionals relating to factors relevant to determining disability. This policy is especially important for claimants alleging mental impairments.

Recommendation 13. The Commission recommends that a permanent independent physician selection board be appointed by the Secretary of the Department of Human Resources. This panel should be responsible for:

- (1) Reviewing the qualifications and performance of consultative examiners;

- e) A plan to limit the caseload of DDS staff to a reasonable size designed to ensure efficient use of staff and to obtain the best possible decision in each case; and
- f) Other plans designed to ensure that the disability hearing process in North Carolina runs expeditiously and fairly in meeting the needs of disabled citizens.

Recommendation 15. The Commission recommends that DDS work with the Disability Task Force to develop procedures designed to ensure that claims based in whole or in part on mental impairments be considered with full due process.

Recommendation 16. The Commission recommends that all policies developed pursuant to this report be applied to the processing of medicaid claims where they are relevant to that process.

Recommendation 17. The Commission recommends that the General Assembly enact legislation directing the implementation of the studies and the development of the policies recommended in this report. We further recommend that the relevant parties be directed to report on the progress made toward those goals to the 1985 Session of the General Assembly.

Recommendation 18. The Commission recommends that the General Assembly continue the Disability Review Commission in 1984-85 with any funds that were unspent during the 1983-84 fiscal year. This will allow continued oversight by the Legislature of the operation of the Disability program and its recommendations for improvements.

*Draft legislation will be attached as an addendum.

